

### **REMARKS**

The Non-Final Office Action mailed September 10, 2008 and the references cited therein have been carefully considered. Claims 1-13 and 15-25 are now pending in the application, although Claims 1-10 have been withdrawn from consideration. By this Response, Claims 15-25 have been amended and new Claims 26 and 27 added. Claims 16-19 have been amended to clarify aspects of the invention recited therein and particularly point out and distinctly claim that which Applicant regards as those aspects of the invention. Also, Claims 15 and 20-25 have been amended to remove the “in particular” language recited therein, in order to similarly clarify that which Applicant regards as those aspects of the invention. Support for new Claims 26 and 27 can be found at page 8, lines 8-21 as well as Figs. 5-8 and 11-13 of the drawings. Thus, no new matter has been added by the amendments to the claims. Applicants specifically respond below to the issues raised in the subject Office Action.

#### **Claim Rejections under 35 USC § 112**

In the Office Action, Claims 16-19 and 22-25 have been rejected under 35 USC §112, second paragraph, as being indefinite because they are drawn to a series of packages but are further limited with reference to features of a mold and it is unclear how the mold features are intended to further limit the series of packages. Applicant has amended Claims 16-19 and 22-25 to clarify that which Applicant regards as those aspects of the invention. Also, Applicant believes the recited mold features impart structural limitations to the series of packages claimed. Thus, Applicant requests reconsideration and withdrawal of this rejection.

It has been held that “the structure implied by process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially...where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.” See,

e.g., In re Garner, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations.) Accordingly, the process steps in the claims rejected under section 112, second paragraph recite mutual structure that is associated with the "series of packages" as they are formed from a common mold as recited in the claims. Thus, for example, as recited in Claim 16, "a first insert piece is provided for forming suspension means for the package" on a first side of the hinge forming means and/or "a second insert piece is provided for forming a receiving cavity" on the opposite side of the hinge forming means. Also, the "series of packages mutually differ in at least one of form, suspension means and receiving means based on the first and/or second insert pieces provided." Thus, the series of packages would have common features based on the mutual mold that formed them. Also, the suspension means and/or receiving cavity are interchangeable features of the mutual mold that forms the series of packages. Accordingly, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C §112, second paragraph.

**Claim Rejections under 35 USC §§ 102(b or c) and/or 103(a)**

In the Office Action, Claims 11-13 and 15-25 are rejected in the alternative under 35 U.S.C. §102(b or c) as being anticipated and/or obvious over any one of the following references: U.S. Published Patent Application No. 2006/0000738 to Kumakura et al. (**Kumakura**); U.S. Patent No. 4,415,084 to Hauser et al. (Hauser); U.S. Patent No. 6,871,742 to Paik (**Paik**); and U.S. Patent No. 6,276,529 to Freehan Jr. (**Freehan Jr.**) alone or in combination with Applicant's own disclosure of the prior art. The examiner contends that these references clearly teach a package or series of packages as recited in the claims or alternatively that it would have been obvious to one of ordinary skill in the art in view of

applicant's admitted prior art to alter the references to arrive at his claimed invention.. Applicant respectfully traverses these rejections.

One aspect of the disclosed technologies is that the closing parts are slightly curved, at least adjacent the hinge means such that, in a closed condition, the package can stand freely on a longitudinal edge located adjacent the hinge means or formed thereby. Thus, this aspect of the invention provides that the recited first and second closing parts are slightly curved adjacent to the hinge means. Also, the package is freely stands on that longitudinal edge. Another aspect of the disclosed technologies is that the first and second integrally formed closing parts which cover parts are connected to the closing parts via break lips or such weakening means such that after opening the package, the sub-package can be broken from the closing parts and is suitable as take-away package for at least one product packaged in the package. Yet a further aspect of the disclosed technologies is that a series of packages including some or all of the above mentioned aspects are provided, while the series of packages has mutual aspects as well as differ as recited in the claims.

**Kumakura** discloses a commodity package for holding an article. The package has a recess formed by two hinged portions thereof. However, contrary to the contention of the subject Office Action, Kumakura does not disclose "slightly curved" parts adjacent the hinge. In fact, the edges and side portions of the package, particularly near the bending portion (16), are all linear. What is more, there are no curved parts in Kumakura that make the package free standing on a longitudinal edge. In Kumakura two parallel hinge lines are provided, at opposite sides of a bottom portion (17). It would be impractical to curve these hinge lines since then the package would not fold or seal properly and thus could not properly hold its contents. Also, curving the two parallel hinge lines would not make the package more stable; possibly to the contrary. Therefore, Kamakura fails to disclose or reasonably suggest all the

elements of the claimed invention. Also, a person skilled in the art would not contemplate curving the hinge lines in Kumakura. Thus, it would not be obvious to alter Kamakura as suggested in the Office Action to arrive at the claimed invention.

**Hauser** discloses a blister package, which is significant because such packages are inherently formed by a tray-like container and a separate sheet-like cover that are melted and/or bonded together. Accordingly, Hauser fails to disclose or reasonably suggest two integrally injection molded parts that pivot along a hinge means. In fact, Hauser does not include a “hinge line” since the two parts forming the package are manufactured independently and sealed together thereafter. Moreover, the teaching of Hauser are specifically directed at blister packages and problems associated with such packages. Thus, Hauser teaches away from altering the packaging taught therein to be something other than a blister package, such as making the two parts integrally injection molded. Therefore, Hauser fails to disclose or reasonably suggest all the elements of the claimed invention. Also, a person skilled in the art would not contemplate integrally form both closing parts of a blister package as taught by Hauser. Thus, it would not be obvious to alter Hauser as suggested in the Office Action to arrive at the claimed invention.

**Paik** discloses a free standing holder for printed matter. Contrary to the contention in the Office Action, Paik does not disclose a first and second closing part that are both curved adjacent the hinge. Rather, the front panel (22) in Paik is completely flat and linear, particularly adjacent the linear hinge line. Also, Paik is directed at holding printed matter, which are clearly flat articles. Thus, there is no reason to alter the front panel (22) in Paik to arrive at the claimed aspect of the invention. Therefore, Paik fails to disclose or reasonably suggest all the elements of the claimed invention. Also, a person skilled in the art would not contemplate curving the front panel taught by Paik. Thus, it would not be obvious to alter Paik as suggested in the Office Action to arrive at the claimed invention.

**Freehan** discloses another blister-type package. As with Hauser above, Freehan fails to disclose or reasonably suggest two integrally injection molded parts that pivot along a hinge means. It is because blister packages are rather difficult to open that Freehan teaches a convenient opening strip for such packages. Thus, there is no reason to make Freehan something other than a blister package as it would defeat the purpose of providing the opening strip. What is more, Freehan clearly fails to disclose or suggest a free standing package. Rather, Freehan is clearly intended to hang from one or more of the punch apertures shown in every embodiment therein. The Office Action fails to include any reason to modify Freehan to make it free standing, in addition to a non-blister package in order to arrive at all the claimed aspects of the invention. Therefore, Freehan fails to disclose or reasonably suggest all the elements of the claimed invention. Also, a person skilled in the art would not contemplate integrally forming both parts of the package disclosed by Freehan or making it free standing. Thus, it would not be obvious to alter Freehan as suggested in the Office Action to arrive at the claimed invention.

Additionally, the prior art cited in the Office Action further fails to disclose or reasonably suggest the longitudinal edge, upon which the package is capable of free standing, is slightly curved as recited in new Claim 26. Also, the prior art fails to disclose or reasonably suggest a package that can stand freely on a curved longitudinal edge alone without support from other non-curved portions of the package, as recited in new Claim 27.

Thus, it would not have been obvious to one of ordinary skill in the art at the time of the subject invention in view of Kumakura, Hauser, Paik or Feehan , collectively or individually to arrive at the claimed invention. Also, the claimed invention is novel over Kumakura, Hauser, Paik and/or Feehan. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 (b or c) and 103(a).

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### **Conclusion**

Entry of the amendments herein and favorable consideration of Claims 11-13 and 15-27 are hereby solicited. In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A Notice to this effect is respectfully requested. If the Examiner has any questions or suggestions to expedite allowance of this application, he is cordially invited to contact Applicants' attorney at the telephone number provided.

Respectfully submitted,

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